

Federal Maritime Commission

§ 502.69

(b) *Procedure for intervention.* (1) Upon request, the Commission will furnish a service list to any member of the public pursuant to part 503 of this chapter.

(2) The motion must:

(i) Comply with all applicable provisions of subpart A of this part;

(ii) Indicate the type of intervention sought;

(iii) Describe the interest and position of the person seeking intervention, and address the grounds for intervention set forth in paragraph (c) of this section;

(iv) Describe the nature and extent of its proposed participation, including the use of discovery, presentation of evidence, and examination of witnesses;

(v) State the basis for affirmative relief, if affirmative relief is sought; and

(vi) Be served on existing parties by the person seeking intervention pursuant to subpart H of this part.

(3) A response to a motion to intervene must be served and filed within 15 days after the date of service of the motion.

(c)(1) *Intervention of right.* The presiding officer or Commission must permit anyone to intervene who claims an interest relating to the property or transaction that is subject of the proceeding, and is so situated that disposition of the proceeding may as a practical matter impair or impede the ability of such person to protect its interest, unless existing parties adequately represent that interest.

(2) *Permissive intervention.* (i) *In general.* The presiding officer or Commission may permit anyone to intervene who shows that a common issue of law or fact exists between such person's interest and the subject matter of the proceeding; that intervention would not unduly delay or broaden the scope of the proceeding, prejudice the adjudication of the rights, or be duplicative of the positions of any existing party; and that such person's participation may reasonably be expected to assist in the development of a sound record.

(ii) *By a government department, agency, or the Commission's Bureau of Enforcement.* The presiding officer or Commission may permit intervention by a Federal or State government department or agency or the Commission's

Bureau of Enforcement upon a showing that its expertise is relevant to one or more issues involved in the proceeding and may assist in the consideration of those issues.

(3) The timeliness of the motion will also be considered in determining whether a motion will be granted under paragraph (b)(2) of this section and should be filed no later than 30 days after publication in the FEDERAL REGISTER of the Commission's order instituting the proceeding or the notice of the filing of the complaint. Motions filed after that date must show good cause for the failure to file within the 30-day period.

(d) *Use of discovery by an intervenor.*

(1) Absent good cause shown, an intervenor desiring to utilize the discovery procedures provided in subpart L must commence doing so no more than 15 days after its motion for leave to intervene has been granted.

(2) The Commission or presiding officer may impose reasonable limitations on an intervenor's participation in order to:

(i) Restrict irrelevant or duplicative discovery, evidence, or argument;

(ii) Have common interests represented by a spokesperson; and

(iii) Retain authority to determine priorities and control the course of the proceeding.

(3) The use of discovery procedures by an intervenor whose motion was filed more than 30 days after publication in the FEDERAL REGISTER of the Commission's order instituting the proceeding or the notice of the filing of the complaint will not be allowed if the presiding officer determines that the use of the discovery by the intervenor will unduly delay the proceeding. [Rule 68.]

§ 502.69 Motions.

(a) In any adjudication, an application or request for an order or ruling not otherwise specifically provided for in this part must be by motion. After the assignment of a presiding officer to a proceeding and before the issuance of his or her recommended or initial decision, all motions must be addressed to and ruled upon by the presiding officer unless the subject matter of the motion is beyond his or her authority, in

§ 502.70

46 CFR Ch. IV (10–1–15 Edition)

which event the matter must be referred to the Commission. If the proceeding is not before the presiding officer, motions must be designated as *petitions* and must be addressed to and ruled upon by the Commission.

(b) Motions must be in writing, except that a motion made at a hearing may be sufficient if stated orally upon the record.

(c) Oral argument upon a written motion may be permitted at the discretion of the presiding officer or the Commission.

(d) A repetitious motion will not be entertained.

(e) All written motions must state clearly and concisely the purpose of and the relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds supporting the relief requested; and must conform with the requirements of subpart H of this part.

(f) Any party may file and serve a response to any written motion, pleading, petition, application, etc., permitted under this part except as otherwise provided respecting answers (§ 502.62), shortened procedure (subpart K of this part), briefs (§ 502.221), exceptions (§ 502.227), and reply to petitions for attorney fees under the Equal Access to Justice Act (§ 502.503(b)(1)).

(g) *Dispositive and non-dispositive motions defined.* For the purpose of these rules, *dispositive motion* means a motion for decision on the pleadings; motion for summary decision or partial summary decision; motion to dismiss all or part of a proceeding or party to a proceeding; motion for involuntary dismissal; motion for initial decision on default; or any other motion for a final determination of all or part of a proceeding. All other motions, including all motions related to discovery, are non-dispositive motions. [Rule 69.]

§ 502.70 Procedure for dispositive motions.

(a) A dispositive motion as defined in § 502.69(g) of this subpart must include a concise statement of the legal basis of the motion with citation to legal authority and a statement of material facts with exhibits as appropriate.

(b) A response to a dispositive motion must be served and filed within 15 days after the date of service of the motion. The response must include a concise statement of the legal basis of the response with citation to legal authority and specific responses to any statements of material facts with exhibits as appropriate.

(c) A reply to the response to a dispositive motion may be filed within 7 days after the date of service of the response to the motion. A reply may not raise new grounds for relief or present matters that do not relate to the response and must not reargue points made in the opening motion.

(d) The non-moving party may not file any further reply unless requested by the Commission or presiding officer, or upon a showing of extraordinary circumstances.

(e) *Page limits.* Neither the motion nor the response may exceed 30 pages, excluding exhibits or appendices, without leave of the presiding officer. A reply may not exceed 15 pages. [Rule 70.]

§ 502.71 Procedure for non-dispositive motions.

(a) *Duty to confer.* Before filing a non-dispositive motion as defined in § 502.69(g) of this subpart, the parties must attempt to discuss the anticipated motion with each other in a good faith effort to determine whether there is any opposition to the relief sought and, if there is opposition, to narrow the areas of disagreement. The moving party must state within the body of the motion what attempt was made or that the discussion occurred and whether the motion is opposed.

(b) *Response to a non-dispositive motion.* A response to a non-dispositive motion must be served and filed within 7 days after the date of service of the motion.

(c) *Response replies.* The moving party may not file a reply to a response to a non-dispositive motion unless requested by the Commission or presiding officer, or upon a showing of extraordinary circumstances.

(d) *Page limits.* Neither the motion nor the response may exceed 10 pages,